

Most in law enforcement don't follow the law

A public records audit of the state's police agencies finds a majority refusing to release information the law requires to be made public

Law enforcement is one of the most powerful divisions of government, and a common perception is that police agencies are also the most deliberately secretive. Still, the California Supreme Court has cautioned, "If the press and the public are precluded from [access to law enforcement records], there will be no method by which the public can ascertain whether the law is being properly applied or carried out in an evenhanded manner." (*CBS v. Block* (1986) 42 Cal.3d 646, 656.)

For example, let's say it's become common knowledge over the past two years that the northwest corner of your community sees much more police patrol activity than the southeast corner, where there's significantly more crime. Would it interest you to know that your police chief entered a real estate cooperative two years ago and purchased three multi-million dollar apartment complexes in the northwest corner? A review of the chief's statement of economic interests (Form 700), a document required by the Political Reform Act of 1974 (Government Code § 81000 *et seq.*) to be available to the public, would reveal that information.

Or, suppose you are looking to buy a home in the central part of a city ten miles away; would it interest you to know that over the past six months the police have received five times as many reports of residential burglaries in that area as compared to the rest of that city? You could know this fact if you had access to the crime report information required to be available by the California Public Records Act ("CPRA," Government Code § 6250 *et seq.*).

And what if your city council was considering a 10 percent utility tax to pay to increase the salary and fringe benefits of police officers? Would you be interested in knowing that those salaries are already 20 percent higher than those in surrounding communities? You'd learn that fact if you had access to police officer salary schedules, which the CPRA requires to be available to any person for the asking.

Our republican form of government survives only when the electorate remains well-informed about what government has done and what public officials are contemplating on our behalf. Unfettered access to information increases the people's control over their elected representatives and reduces the chances of tyranny or corruption.

The CPRA, fashioned after the Federal Freedom of Information Act ("FOIA," 5 U.S.C. § 552), was enacted by the California Legislature in 1968 to ensure the people's access to vital information about how the state and local governments were conducting their business.

On this past December 4 Californians Aware (www.CalAware.org), a non-profit organization devoted to protecting open government laws and First Amendment rights, coordinated a state-wide public records audit (the largest ever of its kind) to determine how well California's law enforcement agencies were sharing information about themselves with their communities.

To avoid any misunderstanding, each time our auditors entered a police, sheriff's or Highway Patrol office, they asked to be directed to the person responsible for public records requests. Then, they asked not for investigative files or personnel evaluations, and not for the identities of those reporting child or spousal abuse. Instead they asked to see information expressly identified by law as available to the public (e.g., the police chief's employment contract and Form 700; the officers' salary schedule; the most recent death in custody report; and

the name, occupation, birth date, and sex of all persons arrested for robbery, burglary, or sexual assault during a two-week period, along with the date, time, and location of the arrest).

Californians Aware is not new to public records audits. Just last year we did two covering state agencies. The first produced such dismal results that the Governor issued an executive order (S-03-06) requiring all executive branch departments, offices, boards and commissions to undergo public records training and to revise their public records access guidelines. Our second audit then awarded the agencies an improved “grade”: C plus.

So how did the more than 200 police agencies perform? Most were miserable.

Despite the fact that the law bars agencies from requiring any disclosures from the records requester or placing any other conditions on providing access, the majority demanded to know the identity of our auditors or told them to go somewhere else to get the information. Some agencies demanded to see and copied the auditor’s driver’s license, while one even wanted to get a Social Security Number, supposedly to check to see if the auditor should be arrested on any outstanding warrants. Many said the crime and arrest information the CPRA requires to be available to the public was confidential; a few said it would not be released without a subpoena.

Some auditors reported facing physical intimidation, overt hostility, and prompt investigations to determine who they were and where they worked.

Even though all but two of our auditors were members of the news media, they did not identify themselves as such when requesting the public records, instead making the requests as any member of the public might.

As reported by this newspaper, results were, on average, dismal to disgusting.

California’s open government law declares, “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (Government Code § 54950.) This statement of the people’s sovereignty is entirely consistent with the Declaration of Independence: “Governments are instituted among Men, deriving their just powers from the consent of the governed . . .”

The U.S. Supreme Court has often warned against permitting unjustified secrecy in government, saying that information is necessary “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” (*John Doe Agency v. John Doe Corp.* (1989) 493 U.S. 146, 152.) “Neither our elected nor our appointed representatives may abridge the free flow of information simply to protect their own activities from public scrutiny.” (*Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 19.)

The results of this audit demonstrate that law enforcement, city and county leaders should expect far better from their public records and information officers, beginning with a stern reminder of whom they work for and the reason why the law demands they make public information public.

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